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# HOUSE BILL No. 1066

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-11-1.

**Synopsis:** Eminent domain law. Permits the plaintiff in an eminent domain action to take possession of the defendant's property upon payment to the court clerk of a deposit equal to the last amount offered by the plaintiff to the defendant.

**Effective:** July 1, 2002.

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January 8, 2002, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## HOUSE BILL No. 1066

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 32-11-1-5 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. Any defendant may  
3       object to such proceedings on the grounds that the court has no  
4       jurisdiction either of the subject matter or of the person, or that the  
5       plaintiff has no right to exercise the power of eminent domain for the  
6       use sought, or for any other reason disclosed in the complaint or set up  
7       in such objections. Such objections shall be in writing, separately stated  
8       and numbered, and shall be filed not later than the first appearance of  
9       such defendant; and no pleadings other than the complaint and such  
10      statement or objections shall be allowed in such cause, except the  
11      answer provided for in section 8 of this chapter: provided, that  
12      amendments to pleadings may be made upon leave of court. If any such  
13      objection shall be sustained, the plaintiff may amend ~~his~~ **the** complaint  
14      or may appeal to the supreme court or court of appeals from such  
15      decision, as and in the manner that appeals are taken from final  
16      judgments in civil actions, of which appeal all the parties shall take  
17      notice and by which they shall be bound. But if such objections are

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1 overruled, the court or judge shall appoint appraisers as provided for  
 2 in this chapter; and from such interlocutory order overruling such  
 3 objections and appointing appraisers, such defendants, or any of them,  
 4 may appeal to the supreme court or court of appeals from such decision  
 5 as and in the manner that appeals are taken from final judgments in  
 6 civil actions, upon filing with the clerk of such court a bond, with such  
 7 penalty as the court or judge shall fix, with sufficient surety, payable to  
 8 the plaintiff, conditioned for the diligent prosecution of such appeal  
 9 and for the payment of the judgment and costs which may be affirmed  
 10 and adjudged against the appellants, such appeal bond shall be filed  
 11 within ten (10) days after the appointment of such appraisers. All the  
 12 parties shall take notice of and be bound by such appeal. The transcript  
 13 shall be filed in the office of the clerk of the supreme court within thirty  
 14 (30) days after the filing of the appeal bond. Such appeal shall not stay  
 15 proceedings in such cause. **However, an appeal initiated under this**  
 16 **section stays an expedited purchase proceeding initiated under**  
 17 **section 5.5 of this chapter.**

18 SECTION 2. IC 32-11-1-5.5 IS ADDED TO THE INDIANA CODE  
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 20 1, 2002]: **Sec. 5.5. (a) "Expedited purchase", as used in this chapter,**  
 21 **refers to the awarding of a fee simple or a lesser interest in real**  
 22 **property in a condemnation action upon the payment of a deposit**  
 23 **of money.**

24 **(b) Except as otherwise provided, the requirements of this**  
 25 **chapter apply to an expedited purchase action initiated under this**  
 26 **section.**

27 **(c) At any time:**

28 **(1) after a complaint in condemnation is filed under this**  
 29 **chapter; and**

30 **(2) before a judgment is rendered;**

31 **the plaintiff may file an expedited purchase petition requesting the**  
 32 **court to award the plaintiff a fee simple title or a lesser interest in**  
 33 **real property that is the subject of the condemnation proceeding**  
 34 **upon the payment of a deposit of money, pending a final resolution**  
 35 **of the property value.**

36 **(d) If a defendant in a condemnation proceeding has filed**  
 37 **objections to the condemnation proceeding under section 5 of this**  
 38 **chapter, the court shall hear and rule on those objections:**

39 **(1) within thirty (30) days; and**

40 **(2) before hearing the plaintiff's expedited purchase petition.**

41 **An appeal of the court's ruling on the defendant's objections stays**  
 42 **an expedited purchase proceeding initiated under this section.**



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(e) If the court has overruled the defendant's objections under section 5 of this chapter to the complaint in condemnation, the court shall grant the plaintiff's request for an expedited purchase. If the request for an expedited purchase is granted, the court shall:

- (1) appropriate the property for the plaintiff;
- (2) order the transfer of the property interests requested by the plaintiff to the plaintiff; and
- (3) authorize the plaintiff to take possession of the property upon the plaintiff's deposit of the amount required under subsection (f).

(f) Before taking possession of property under this section, the plaintiff shall deposit with the clerk of the court an amount of money equal to the amount last offered by the plaintiff to the defendant for the defendant's property.

(g) Following the court's approval of an expedited purchase petition under this section, the court shall appoint appraisers to assess the benefits and damages accruing to the property as the result of its appropriation to the plaintiff. The appraisers shall take the oath required under section 6 of this chapter that applies to the assessment required in an expedited purchase proceeding under this section.

(h) A party aggrieved by the assessment of benefits or damages may file a written exception to the assessment using the procedures set forth in section 8 of this chapter.

(i) If there are no exceptions to the assessment under section 8 of this chapter, the court shall order the plaintiff to pay the damages assessed, minus the amount deposited under subsection (f). If exceptions are filed to the assessment, the court shall hear the exceptions and make the findings and judgments required under section 8 of this chapter. The court shall order the plaintiff to pay the damages determined at trial, minus the amount deposited under subsection (f). The clerk of the court shall release the plaintiff's deposit to the plaintiff for the purpose of paying the remainder of the damage award to the defendant.

(j) Upon the plaintiff's payment of damages to the defendant, the plaintiff shall file or cause to be filed with the auditor of the county in which the real estate that is the subject of the condemnation complaint is located a certificate certifying the amount paid to the defendant and including a description of the real estate appropriated under this section. The auditor of the county shall then transfer the real estate being condemned to the plaintiff on the tax records of the county.

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(k) If no exceptions are filed to the report of the appraisers assessing damages and the person seeking an appropriation under this chapter fails to pay the damages assessed within one (1) year after the report is filed, the person shall pay:

(1) the amount of damages assessed;

(2) interest accruing from the end of the one (1) year period; and

(3) a penalty equal to ten percent (10%) of the amount of the damages assessed.

(l) If exceptions are filed to the report of the appraisers, a judgment is rendered sustaining the exceptions, the person seeking an appropriation under this chapter fails to pay the damages that are assessed within one (1) year after the judgment is rendered, and the judgment is not appealed, the person shall pay:

(1) the judgment and costs;

(2) interest beginning one (1) year after the date the judgment is rendered; and

(3) a penalty equal to ten percent (10%) of the amount of the judgment.

(m) If an appeal is taken from a judgment assessing damages and the person seeking an appropriation under this chapter fails to pay the judgment within one (1) year after the final judgment of affirmance or reversal is rendered in the court of appeals or the supreme court, the person shall pay:

(1) the amount of damages assessed in the judgment;

(2) interest beginning one (1) year after the date the judgment is rendered; and

(3) a penalty equal to ten percent (10%) of the amount of the judgment.

SECTION 3. IC 32-11-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) **This section does not apply to an expedited purchase action initiated under section 5.5 of this chapter.**

(b) If the plaintiff shall pay to the clerk of such court the amount of damages thus assessed, it shall be lawful for such plaintiff to take possession of and hold the interest in the lands so appropriated, for the uses stated in such complaint, subject to the appeal provided for in section 5 of this chapter. But the amount of such benefits or damages shall be subject to review as provided in section 8 of this chapter.

~~(b)~~ (c) Upon such payment by the plaintiff of the amount of the award of the court appointed appraisers, the plaintiff shall file or cause to be filed with the auditor of the county in which the real estate is



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1 located a certificate, certifying the amount paid to the clerk of the court  
 2 and including therein the description of the real estate being  
 3 appropriated. The auditor of the county shall then transfer the real  
 4 estate being condemned to the plaintiff on the tax records of the county.

5 SECTION 4. IC 32-11-1-11 IS AMENDED TO READ AS  
 6 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. (a) **This section**  
 7 **does not apply to an expedited purchase action initiated under**  
 8 **section 5.5 of this chapter.**

9 (b) If the person seeking an appropriation under this chapter fails:

10 (1) to pay the damages assessed within one (1) year after the  
 11 report of the appraisers is filed, in case no exceptions are filed to  
 12 the report;

13 (2) where exceptions are filed to the report of the appraisers, to  
 14 pay the damages assessed if judgment is rendered against such  
 15 exceptions, or to pay the judgment and costs in case such  
 16 exceptions are sustained, within one (1) year after the rendition of  
 17 any such judgment, provided such judgment is not appealed from;

18 (3) in case of an appeal, to pay the damages assessed or the  
 19 judgment rendered in the circuit or superior court within one (1)  
 20 year after final judgment of affirmance or reversal is rendered in  
 21 the supreme court or the court of appeals; or

22 (4) to take possession of the land and adapt it to the use for which  
 23 it was appropriated within five (5) years after the payment of the  
 24 award or judgment for damages, except where a fee simple is  
 25 authorized to be condemned and appropriated and is condemned  
 26 and appropriated;

27 the person seeking such appropriation, in either of such cases, shall  
 28 forfeit all rights in and to such real estate or other property as fully and  
 29 completely as though no such appropriation or condemnation had been  
 30 begun or made.

31 ~~(b)~~ (c) An action to declare a forfeiture under this section may be  
 32 brought by any person having an interest in the real estate or other  
 33 property sought to be appropriated, or the question of the forfeiture  
 34 may be raised and determined by direct allegation in any subsequent  
 35 proceedings by any other person to condemn and appropriate such  
 36 property for a public use. In the subsequent proceedings, the person  
 37 seeking the former condemnation or appropriation or the person's  
 38 proper representatives, successors, or assigns shall be made parties.

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